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Legend

Taxpayer =

State =

Statute =

Plan A =

Plan B =

Plan C =

Plan D =

Plan E =

Dear :

This is in response to your letter of May 10, 2013, requesting rulings on behalf of Taxpayer concerning the federal income tax treatment under section 104(a)(1) of the Internal Revenue Code (Code) of certain accidental disability allowances and death benefits provided to public employees and their survivors under Plans A through E.

Taxpayer is responsible for the administration of Plans A through E (the Plans), along with several other qualified defined benefit plans for public employees in State. The Plans are established under and governed by the Statute.

Plan A is a cost-sharing multiple-employer public defined benefit plan established to provide pension benefits for most employees of State, and any county, municipality, school district, or public agency. Membership in Plan A is generally required as a condition of employment for most employees of the State or any county, municipality, school district, or public agency. Certain members of Plan A qualify to enroll into special employee groups, such as certain law enforcement officers, prosecutors, legislators, and workers' compensation judges.

Plan B is a cost-sharing, multiple-employer public defined benefit plan established to provide pension benefits for substantially all teachers or members of the professional staff and other employees who have titles that are unclassified, professional, and certified. Membership in Plan B is mandatory for substantially all members of the professional staff and other employees who have titles that are unclassified, professional, and certified.

Plan C is a cost-sharing, multiple-employer public defined benefit plan established to provide pension benefits for all policemen and firemen in municipalities where local police and firemen pension funds existed prior to a certain date or where Plan C was adopted by referendum or resolution, and for certain State and county employees. Enrollment is restricted to eligible policemen and firemen who are permanent and full-time and who pass the physical and mental fitness requirements.

Plan D is a single-employer public defined benefit plan established to provide pension benefits for all uniformed officers and troopers of State police. It is mandatory for them to enroll in Plan D.

Plan E is a single-employer public defined benefit plan established to provide pension benefits for employees of State penal institutions, employed prior to a certain date, who did not transfer to Plan C. Plan E no longer accepts new members. There are no active members in Plan E, only retirees or their survivors who receive benefits.

Statute sections 43:15A-43 (Plan A), 18A: 66-39(c) (Plan B), 43:16A-7(1) (Plan C), 53:5A-10(a) (Plan D), and 43:7-12 (Plan E) each separately identify eligibility for an accidental disability retirement allowance for the members of each respective Plan. Each Statute section provides for a board of trustees or a commission to determine that an accidental disability allowance is payable upon finding that an employee is permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties.

After a board of trustees or a commission determines that an accidental disability allowance is payable, Statute sections 43:15A-46 (Plan A), 18A:66-42 (Plan B), 43:16A-7(2) (Plan C), 53:5A-10b (Plan D), and 43:7-12 (Plan E) provide for the determination of the amount of benefits. The Statute sections for Plans A and B provide for an annuity which is the actuarial equivalent of the member's accumulated deductions, plus interest, and a pension which, when added to the annuity, totals 72.7% of the member's actual annual compensation for which Plan contributions were being made at the time of the accident. The Statute section for Plan C provides for the payment of an annuity which is the actuarial equivalent of the member's accumulated contributions and interest, and a pension which, when added to the annuity, totals 2/3 of the member's actual annual compensation for which Plan C contributions were being made at the time of the accident or retirement (whichever is greater). The Statute section for Plan D provides for an annuity which is the actuarial equivalent of the member's accumulated contributions and interest, and a pension which, when added to the annuity, totals 2/3 of the member's final compensation.

Statute sections 43:15A-50 (Plan A) and 18A:66-47 (Plan B) provide a member who is retiring with an election to receive benefits in a lifetime retirement allowance or to elect to receive the actuarial equivalent of the retirement allowance in a lesser benefit payable throughout life. If a member who retired on an accidental disability retirement allowance has elected to receive the actuarial equivalent in a lesser benefit, the member's beneficiary receives an actuarially equivalent lesser benefit. For Plans A and B, the Statute sections provide for five optional amounts that may apply to a member's beneficiary.

Statute sections 43:16A-12.1 (Plan C), 53:5A-25 (Plan D) and 43:7-9 (Plan E) provide varying amounts of benefits to the spouse and children of a member who has retired on an accidental disability retirement allowance. For Plans C, D, and E, a member's widow or widower is paid a pension of 50 percent of final compensation for his or her use, to continue during widowhood, plus 15 percent of such compensation payable to one surviving child or an additional 25% of such compensation to two or more children. If there is no surviving widow or widower, 20 percent of compensation will be paid to one surviving child, 35 percent of compensation to two surviving children in equal shares and 50 percent if there are three or more children.

Statute sections 43:15A-49 (Plan A), 18A:66-46 (Plan B), 43:16A-10 (Plan C) and 53:5A-14 (Plan D) provide for accidental death benefits upon the death of the member in active service as a result of an accident met in the actual performance of duty at some definite time and place. Under each of the Statute sections, the death benefit consists of a pension. For all Plans, the amount of the benefit under each statute is calculated on a percentage of the compensation upon which contributions by the member were based in the last year of creditable service.

For Plans A and B, the death benefit is 50 percent of the compensation for the surviving spouse. It is 20 percent, 35 percent or 50 percent to one, two, or three or more surviving children, respectively, if there is no surviving spouse. It is a 35 percent or 40 percent benefit paid to one or two surviving parents, respectively, if there is no surviving spouse or children.

For Plan C, the death benefit is the annual compensation if death occurs in the first year of creditable service and is 70 percent for the surviving spouse. It is 20 percent, 35 percent or 50 percent to one, two, or three or more surviving children, respectively, if there is no surviving spouse. It is a 35 percent or 40 percent benefit paid to one or two surviving parents, respectively, if there is no surviving spouse or children.

For Plan D, the percentage multiplier may be applied to "final compensation" or to "adjusted final compensation." The compensation is the annual compensation if death occurs in the first year of creditable service. "Final adjusted compensation" is defined as final compensation increased by the same percentage increase applied in any adjustments of the compensation schedule of active members after the member's death and before the date on which the deceased member of the retirement system would have accrued 25 years of service under the assumption of continuous service. The applicable percentage multiplier for calculating a portion of the death benefit is 70 percent for the surviving spouse. It is 20 percent, 35 percent or 50 percent to one, two, or three or more surviving children, respectively, if there is no surviving spouse. It is a 35 percent or 40 percent benefit paid to one or two surviving parents, respectively, if there is no surviving spouse or children.

Section 104(a)(1) of the Code excludes from gross income amounts that are received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to employees for personal injuries or sickness incurred in the course of employment. Section 1.104-1(b) of the Income Tax Regulations provides that the exclusion from income of amounts described in section 104(a)(1) also applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee. This exclusion, however, is not available and does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness.

In Rev. Rul. 80-44, 1980-C.B. 34, a statute in the nature of a workmen's compensation act provided for an allowance of the greater of (A) 60 percent of the individual's average final compensation, or (B) the amount to which the individual would be entitled under the normal, years of service, retirement plan. The ruling concluded that the benefits under the statute were excludable under section 104(a)(1) of the Code to the extent that they did not exceed 60 percent of the final average compensation. Any excess over 60

percent of final average compensation was attributable to length of service, and therefore, not excludable from gross income.

Rev. Rul. 80-84, 1980-1 C.B. 35, considered section 183 of a Los Angeles, California statute that provided benefits to survivors when “any member of the Fire or Police Department shall die... after retirement, or while eligible for retirement from such department on account of years of service...”. The ruling concluded that benefits paid to employees’ survivors may qualify as paid under a statute in the nature of a workmen’s compensation act where those benefits are a mere continuation of employees’ section 104(a)(1) benefits.

Accordingly, based on the information submitted and representations made, and authorities cited above, we conclude as follows:

(1) Section 43:15A-43 (Plan A), section 18A: 66-39(c) (Plan B), section 43:16A-7(1) (Plan C), section 53:5A-10(a)(Plan D), and section 43:7-12(Plan E) are statutes in the nature of workmen’s compensation acts under section 104(a)(1) of the Code because payments for accidental disability retirement are only made if the member is permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties.

Accidental disability retirement allowance paid under section 43:15A-46 (Plan A) and section 18A:66-42 (Plan B) shall not be considered gross income to the recipient under section 104(a)(1) of the Code.

Accidental disability retirement allowance paid under section 43:16A-7(2) and (3) (Plan C), section 53:5A-10 b and c (Plan D), and section 43:7-12 (Plan E) shall not be considered gross income to the recipient under section 104(a)(1) of the Code.

(2) Accidental disability survivor benefits paid under section 43:15A-50 (Plan A), section 18A:66-47 (Plan B), section 43:16A-12.1 (Plan C), section 53:5A-25 (Plan D), and section 43:7-9 (Plan E) to a survivor of an accidental disability retirement retiree shall not be considered gross income to the recipient to the extent the amount does not exceed the underlying allowance that was excludable from the retiree’s gross income under section 104(a)(1) of the Code.

(3) Accidental death benefits paid to a survivor of a member who dies as a result of an accident met in the actual performance of duty, shall not be considered gross income to the recipient under section 104(a)(1) of the Code if paid under section 43:15A-49 a.(1) (Plan A) but only to the extent of the benefits specified in section 43:15A-49 b and e or, if paid under section 18A:66-46 a(1) (Plan B), but only to the extent of the benefits specified in section 18A:66-46 b and e.

Accidental death benefits paid to a survivor of a member who dies as a result of an accident met in the actual performance of duty, shall not be considered gross income to the recipient under section 104(a)(1) of the Code if paid under section 43:16A-10(1)(a) (Plan C) but only to the extent of the benefits specified in section 43:16A-10(2) and (5).

Accidental death benefits paid to a survivor of a member who dies as a result of an accident met in the actual performance of duty, shall not be considered gross income to the recipient under section 104(a)(1) of the Code if paid under section 53:5A-14a.(1) (Plan D) but only to the extent of the benefits specified in section 53:5A-14 b.(1), b.(2) and e.

No opinion is expressed or implied concerning the federal tax consequences under any other provision of the Code or regulations or Statute other than those specifically stated above.

These rulings are directed only to the Taxpayer who requested them. Section 6110(k)(3) of the Code provides that they may not be used or cited as precedent.

Sincerely,

Harry Beker
Chief, Health & Welfare Branch
Office of Division Counsel/Associate Chief
Counsel
(Tax Exempt and Government Entities)

cc: